

## **Water Transfer Act 2001**

**K.S.A. 82a-1501. Water transfer act; definitions.** As used in the water transfer act:

(a)(1) "Water transfer" means the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside a 35-mile radius from the point of diversion of such water. In determining the amount of water transferred in the case of a water transfer supplying water to multiple public water supply systems or other water users, the amount of water transferred shall be considered to be the aggregate amount of water which will be supplied by the transfer to all public water supply systems and other water users whose points of use are located outside a 35-mile radius from the point of diversion of such water.

(2) Water transfer does not include a release of water from a reservoir to the water's natural watercourse for use within the natural watercourse or watershed, made under the authority of the state water plan storage act (K.S.A. 82a-1301 et seq. and amendments thereto) or the water assurance program act (K.S.A. 82a-1330 et seq. and amendments thereto).

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse;

(3) the location of a well in the case of groundwater diversion; or

(4) the geographical center of the points of diversion in the case of multiple diversion points.

(c) "Point of use" means the geographical center of each water user's proposed or authorized place of use where any water authorized by the proposed transfer will be used.

(d) "Chief engineer" means the chief engineer of the division of water resources of the state board of agriculture.

(e) "Secretary" means the secretary of the department of health and environment, or the director of the division of environment of the department of health and environment if designated by the secretary.

(f) "Director" means the director of the Kansas water office.

(g) "Panel" means the water transfer hearing panel.

(h) "Party" means: (1) The applicant; or (2) any person who successfully intervenes pursuant to K.S.A. 82a-1503 and amendments thereto and actively participates in the hearing.

"Party" does not mean a person who makes a limited appearance for the purpose of presenting a statement for or against the water transfer.

(i) "Commenting agencies" means groundwater management districts and state natural resource and environmental agencies, including but not limited to the Kansas department of health and environment, the Kansas water office, the Kansas water authority, the Kansas department of wildlife and parks and the division of water resources of the Kansas state board of agriculture.

(j) "Public water supply system" means any water supply system, whether publicly or privately owned, for which a permit is required pursuant to K.S.A. 65-163 and amendments thereto. (History: L. 1983, ch. 341, § 1; L. 1993, ch. 219, § 1; July 1.)

**K.S.A. 82a-1501a. Hearing panel; hearing officer appointed, when.** (a) The water transfer hearing panel shall consist of the chief engineer, the director and the secretary. The chief engineer shall serve as chairperson of the panel. All actions of the panel shall be taken by a majority of the members. The panel shall have all powers necessary to implement the provisions of this act.

(b) The panel shall select a hearing officer to conduct a hearing in accordance with this act when: (1) An application for a water transfer is complete; or (2) the chief engineer, or the panel by a majority vote which includes the vote of the chief engineer, determines it to be in the best interest of the state to conduct a water transfer hearing on an application for a permit to appropriate water or an application for a change to an existing water right pursuant to the Kansas water appropriation act or on a proposed contract for the sale of water from the state's conservation storage water supply capacity, even though the appropriation or sale would not be a water transfer as defined by K.S.A. 82a-1501 and amendments thereto.

(c) The hearing officer shall be an independent person knowledgeable in water law, water issues and hearing procedures. The hearing officer shall be a presiding officer for the purposes of the Kansas administrative procedure act. Subject to approval by the panel, the hearing officer, on behalf of the state, may employ such personnel and contract for such services and facilities as necessary to carry out the hearing officer's duties under this act. (History: L. 1993, ch. 219, § 2; July 1.)

**K.S.A. 82a-1502. Approval of transfers, conditions.** (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken for transfer unless: (1) The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever

an emergency exists, a water transfer may be approved by the panel on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the panel.

(b) No water transfer shall be approved under the provisions of this act: (1) If such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water; and (2) unless the hearing officer determines that the applicant has adopted and implemented conservation plans and practices that (A) are consistent with the guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto, (B) have been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held and (C) if the transfer is for use by a public water supply system, include the implementation of a rate structure which encourages the efficient use of water that is determined by the hearing officer to be effective and if designed, implemented and maintained properly, will result in wise use and responsible conservation and management of water used by the system.

(c) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the hearing officer shall consider all matters pertaining thereto, including specifically:

(1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;

(2) any reasonably foreseeable future beneficial use of the water;

(3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;

(4) alternative sources of water available to the applicant and present or future users for any beneficial use;

(5) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;

(6) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion, which plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer;

(7) the effectiveness of conservation plans and practices adopted and implemented by the applicant and any other entities to be supplied water by the applicant;

(8) the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer, which plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto; and

(9) any applicable management program, standards, policies and rules and regulations of a groundwater management district. (History: L. 1983, ch. 341, § 2; L. 1993, ch. 219, § 3; July 1.)

**K.S.A. 82a-1503. Application for transfer; hearing, procedure; costs of hearing, fund.** (a) Any person desiring to make a water transfer shall file with the chief engineer an

application in the form required by rules and regulations adopted by the chief engineer. If the chief engineer finds the application to be insufficient to enable the chief engineer to determine the source, nature and amount of the proposed transfer, or if the application is not complete, the application shall be returned for correction or completion or for any other necessary information.

(b) The hearing officer shall commence the hearing process by giving notice of the prehearing conference not more than 14 days after the panel employs the hearing officer. Such notice shall be given by mail to the applicant, any other parties who have intervened and the appropriate commenting agencies and shall be published in the Kansas register and in at least two newspapers having general circulation in the area where the proposed point of diversion is located. The hearing officer shall hold a prehearing conference which shall commence not less than 90 and not more than 120 days after the required notice has been given and shall conclude not later than 45 days after commencement. Not less than 90 and not more than 120 days after the conclusion of the prehearing conference, the hearing officer shall commence a formal public hearing. The formal public hearing shall be held in the basin of origin and, if deemed necessary by the hearing officer, a public comment hearing shall be held in the basin of use. The formal public hearing shall conclude not later than 120 days after commencement and the initial order of the hearing officer approving or disapproving the water transfer shall be issued not later than 90 days after conclusion of the formal public hearing. The hearing officer may extend a time limit provided by this subsection, but only with the written consent of all parties or for good cause shown.

(c) Intervention in the hearing shall be in accordance with the Kansas administrative procedure act, except that any petition for intervention must be submitted and copies mailed to all parties not later than 60 days before the formal hearing.

(d) Any person shall be permitted to appear and testify at any hearing under this act upon the terms and conditions determined by the hearing officer.

(e) At intervals during or at the conclusion of the hearing, the hearing officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: The hearing facility, the court reporter, the salary of a hearing officer who is not paid for services as a hearing officer by state funds, the travel expenses of the hearing officer and other reasonable costs associated with the hearing. The hearing officer may assess any or all anticipated costs to the applicant before the hearing and subsequently may assess other parties for the parties' fair and equitable portion of the anticipated costs assessed the applicant. Amounts assessed pursuant to this subsection shall be paid to the chief engineer. Upon receipt thereof, the chief engineer shall remit the entire amount to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water transfer hearing fund established by subsection (f).

(f)(1) There is hereby established in the state treasury the water transfer hearing fund.

(2) Moneys credited to the water transfer hearing fund shall be used only to pay: (A) Costs of hearings conducted pursuant to the water transfer act; (B) reimbursement of the applicant for anticipated costs assessed the applicant and subsequently assessed other parties; and (C) refunds of unused moneys assessed as anticipated costs before the hearing. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports, or a person designated by the director of accounts and reports pursuant to K.S.A. 75-3732 and amendments thereto, issued pursuant to vouchers approved by the chief engineer, or a person designated by the chief engineer.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the water transfer hearing fund interest earnings based on:

(A) The average daily balance of moneys in the water transfer hearing fund for the preceding month; and

(B) the net earnings rate for the pooled money investment portfolio for the preceding month. (History: L. 1983, ch. 341, § 3; L. 1986, ch. 392, § 6; L. 1988, ch. 356, § 351; L. 1993, ch. 219, § 4; L. 1996, ch. 253, § 37; L. 2001, ch. 5, § 481.)

**K.S.A. 82a-1504. Order of hearing officer; review by panel, procedure; record of proceedings.** (a) The hearing officer shall render an order either approving or disapproving the proposed water transfer. The hearing officer's order shall include findings of fact relating to each of the factors set forth in subsection (c) of K.S.A. 82a-1502 and amendments thereto. The hearing officer may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as the hearing officer deems necessary for the protection of the public interest of the state as a whole.

(b) An order of the hearing officer disapproving or approving a water transfer, in whole or in part, shall be deemed an initial order. The panel shall be deemed the agency head for the purpose of the Kansas administrative procedure act and shall review all initial orders of the hearing officer in accordance with the Kansas administrative procedure act. Review by the panel shall be in accordance with the standards provided by this act for the hearing officer's initial order and shall be based on the record of the hearing. The final order of the panel shall be entered not later than 90 days after entry of the hearing officer's initial order, except that the panel may extend the 90-day limit, but only with the written consent of all parties or for good cause shown.

(c) Any proceedings pursuant to this act and notice of such proceedings shall be in accordance with the provisions of the Kansas administrative procedure act except as specifically provided by this act.

(d) The record of any hearing or other proceeding held pursuant to this act shall be maintained and made available for public examination in the office of the chief engineer. (History: L. 1983, ch. 341, § 4; L. 1988, ch. 356, § 352; L. 1993, ch. 219, § 5; July 1.)

**K.S.A. 82a-1505. Review and enforcement of panel action; precedence over other cases.** (a) Any action of the panel is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(b) The review proceedings shall have precedence in the district court. Appellate proceedings shall have precedence in the court of appeals and in the state supreme court under such terms and conditions as the supreme court may fix by rule. (History: L. 1983, ch. 341, § 5; L. 1986, ch. 318, § 144; L. 1993, ch. 219, § 6; July 1.)

**K.S.A. 82a-1506. Same; rules and regulations.** The chief engineer shall adopt all rules and regulations necessary to effectuate and administer the provisions of this act. (History: L. 1983, ch. 341, § 6; May 12.)

**K.S.A. 82a-1507. Title of act; application of other laws.** (a) K.S.A. 82a-1501 through 82a-1506, K.S.A. 82a-1501a and this section shall be known and may be cited as the water transfer act.

(b) This act shall not be construed as to exempt the applicant from first complying with the provisions of: (1) Any applicable management program adopted by a groundwater management district pursuant to K.S.A. 82a-1020 and amendments thereto, if such management program (A) does not prohibit water transfers out of the district, (B) applies equally to water users both inside and outside the district and (C) does not have the effect of discriminating against users located outside the district; or (2) the Kansas water appropriation act or the state water plan storage act, whichever is applicable. (History: L. 1993, ch. 219, § 7; July 1.)

**K.S.A. 82a-1508. Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable. (History: L. 1993, ch. 219, § 8; July 1.)

*(Please note: Where this document refers to the Kansas State Board of Agriculture, that reference is now deemed to apply to the Kansas Department of Agriculture, pursuant to K.S.A. 74-568, effective 1995.)*